Buddy's Parking Company, LLC *and* Teamsters Local 727. Case 13–CA–170510

January 16, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of a bilateral informal settlement agreement. Following the filing of a charge and an amended charge filed by Teamsters Local 727 (the Union) on February 25 and May 24, 2016,[1] against Buddy's Parking Company, LLC (the Respondent), the parties entered into an informal settlement agreement, which was approved by the Regional Director for Region 13 on June 20. Among other things, the settlement agreement required the Respondent to: (1) post appropriate notices in English, Spanish, Polish and in additional languages; (2) sign and date the notices for posting in the offices at the Employer's facilities; (3) copy and mail, at its own expense, copies of the Notice; (4) reimburse the Charging Party for dues deducted from employees that were not remitted to the Union, with late payment penalties; and (5) provide the Union with the information requested.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

By letter dated June 28, the compliance officer for Region 13 sent the Respondent a copy of the conformed settlement agreement, with a cover letter advising the Respondent to take the steps necessary to comply with it. By email dated July 26, the compliance officer notified the Respondent that the Respondent was in non-compliance with the settlement agreement, and further advised the Respondent that unless full compliance was achieved within 14 days, the Regional Director would revoke the settlement agreement and issue a complaint.

On August 11, the compliance officer, by email to the Respondent's attorney, notified the Respondent that more than 14 days had elapsed and that, absent full compliance, he would recommend that default proceedings be initiated. However, the Regional Director subsequently refrained from issuing a complaint as a result of oral representations made by the Respondent's attorney that full compliance was forthcoming.

About September 3, the Respondent provided the Region with certifications of compliance with the notice posting and back dues payment provisions of the settlement agreement. On October 3, the compliance officer, by email, notified the Respondent that because the Respondent had still not provided information to the Union, the Respondent was in non-compliance with the settlement agreement. The compliance officer reminded the Respondent that it had already received notice of a default. Based on further oral representations from the Respondent's counsel that the required information was immediately forthcoming, the Regional Director again refrained from issuing a complaint.

About November 15, the Respondent provided further information to the Union that brought the Respondent into compliance with all provisions of the settlement

[1] All dates are 2016 unless otherwise indicated.

agreement, except one: specifically, that the Respondent failed and refused to respond to the Union's request for an updated "change of location" form for the parking lot located at 100 Walton, as required by the settlement agreement. Accordingly, the Respondent remained in default of the settlement agreement.

On November 23, the Acting Regional Director issued a Complaint Based on Breach of Affirmative Provisions of Settlement Agreement (the complaint).[2] On January 4, 2017, the General Counsel filed a Motion for Default Judgment with the Board. On January 5, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing and refusing to furnish the Union with the information requested concerning an updated change of location form for the parking lot located at 100 Walton. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.[3] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Chicago, Illinois, and has been engaged in the business of the management of parking garages.

In conducting its operations during the calendar year ending December 31, 2015, the Respondent derived gross revenues in excess of $500,000, and received at its Illinois facilities products, goods, materials, and services valued in excess of $5000 directly from points outside the state of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents within the meaning of Section 2(13) of the Act:

Carlos Castillo	Owner
Ramona Vega	Operations Manager

Within the 6 months previous to the filing and service of the first amended charge, the Union requested in writing that the Respondent furnish the Union with the following information: an updated change of location form for the parking lot at 100 Walton. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. The Respondent has failed and refused to furnish the Union with the requested information.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive, collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 13 on June 20, 2016, and to respond in a timely manner to the Union's request for an updated "change of location" form for the parking lot located at 100 Walton.

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to "issue a Complaint that includes the allegations covered by the Notice to Employees" and to seek "a full remedy for each unfair labor practice identified in the Notice to Employees." However, as noted above, the complaint includes only the allegation regarding the Respondent's failure to furnish the Union with the updated change of location form for the parking lot at 100 Walton. In addition, in his Motion for Default Judgment, the

[2] The complaint includes only the allegation regarding the Respondent's failure to furnish the Union with the updated change of location form for the parking lot at 100 Walton, and does not include the other allegations covered by the settlement agreement's Notice to Employees.

[3] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

General Counsel has not sought such additional remedies and we will not, sua sponte, include them.[4]

ORDER

The National Labor Relations Board orders that the Respondent, Buddy's Parking Company, LLC, its officers, agents, successors, and assigns, shall

1. Respond in a timely manner to the Union's request for an updated "change of location" form for the parking lot located at 100 Walton.

2. Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 16, 2019

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John F. Ring, Chairman

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Lauren McFerran, Member

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William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). Although the General Counsel's motion requested "a full remedy for the unfair labor practices alleged," the complaint alleges only the sole unmet provision of the settlement agreement, regarding the refusal to furnish information about the parking lot at 100 Walton, Chicago Illinois. Accordingly, despite the settlement agreement's provision empowering the General Counsel to issue a complaint including all of the allegations in the Notice to Employees, here a full remedy for the unfair labor practices alleged is the same as a request to enforce the unmet terms of the settlement agreement.